IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP No.5272 of 2005
Date of decision: 4. 7.2007

Karnail Singh

...Petitioner

vs.

Union Territory Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. RS Longia, Advocate, for the petitioner.

Mr. Sanjiv Sharma, Advocate for respondent Nos. 1 and 2.

Mr. JR Syal, Advocate for respondent No.3.

JUDGMENT:

This petition challenges award of the Labour Court and also seeks quashing of seniority list, Annexure P.7 showing respondent No.3 to be junior to the petitioner.

Case of the petitioner is that he joined as Plumber on daily wages in the Construction Circle of the Union Territory Administration. Respondent No.3 also joined as daily-wager. The petitioner and respondent No.3 were brought on work-charged cadre with effect from 23.3.1983 and in the initial seniority list, the petitioner was shown senior to respondent No.3 but later vide seniority list issued on 31.12.1997, the petitioner was shown junior to respondent No.3. The petitioner raised an industrial dispute which was referred for adjudication. The Labour Court decided the matter

against the petitioner with the following observations:-

> "13. After hearing the rival contention of learned representative for the workman and learned representative for the management, I am of the view that the contention of learned representative for the workman has no force. The perusal of the appointment letter Ex.W2 dated 18th march, 1983 shows that Kuldip Dass has been shown senior to Karnail Singh.
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> 14. So, when in the initial appointment Kuldip Dass was shown senior then it cannot be said that Karnail Singh is senior to Kuldip Dass. Both were treated as work charge by the same order. So, I am of the view that the seniority of Karnail Singh has not been illegally determined by the respondent/management. So this issue is decided against the workman and in favour of the respondent/management."

Only contention raised on behalf of the petitioner is that since the petitioner had joined as daily-wager earlier, he should be treated as senior.

Learned counsel for respondent No.3, however, submitted that period of service prior to regularisation could not be taken into account for counting seniority. Reliance has been placed on judgment of the Hon'ble Supreme Court in **K.Madalaimuthu and another v. State of TN and others,** (2006) 6 SCC 558, wherein it was observed:-

> "24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants. The decisions

cited by Mr.Rao have been rendered in the context of Rule 10(a)(i)(1) and the other relevant rules which are also applicable to the facts of the instant case. Apart from the above, the law is well settled that initial appointment to a post without recourse to the rules of recruitment is not an appointment to a service as contemplated under Rule 2(1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39 (c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the Rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularised. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre."

Learned counsel for the petitioner relied upon judgment of the Hon'ble Supreme Court in **Dr. Amarjit Singh Ahluwalia v. The State of Punjab and others,** 1975(1) SLR 171, to the following effect:-

"11.....It is, therefore, obvious that so far as respondents Nos.3 to 19 were concerned, the date of their appointment was 8th April, 1964 and the length of their continuous service in PCMS Class I was required to be reckoned from that date. It is true that respondents Nos.3 to 19 did not assume charge of their respective posts of promotion until after 25th April, 1964, but that makes no difference because the length of continuous service is to

> be counted from the date of appointment on the hypothesis that once the appointment is effective the person concerned is in the post and his service in the post is deemed to have commenced though under the rules governing his conditions of service he may not be entitled to the salary and allowances attached to the post until he assumes charge of the post. The continuous service of respondents Nos.3 to 19 in PCMS Class I, therefore, commenced from 8th April, 1961 and since that was longer than the continuous service of Dr.Jagjit Singh and the appellant in Public Health Service Class I, which commenced only on 25th April, 1964 respondents Nos.3 to 19 were entitled to be placed senior to Dr.Jagjit Singh and the appellant in the joint seniority list of the integrated PCMS Class I."

After considering rival submissions, we are of the view that no interference is called for with the view taken by the Labour Court. A perusal of appointment letter itself shows that in the order of regularisation, the petitioner was shown to be junior to respondent No.3. Respondent No.3 joined regular service on 23.3.1983, while the petitioner joined regular service on 25.3.1983. No doubt, date of joining could not always be the date of counting seniority but in absence of any statutory rule to the contrary, length of service could be taken as a criteria for determining seniority.

For the above reasons, we do not find any merit in this petition and the same is dismissed.

(Adarsh Kumar Goel)
Judge

July 4 2007 (Ajai Lamba)
'gs' Judge